BILLS AND NOTES—BANKS—PAYMENT OF DRAFT TO IMPOSTER—LIABILITY TO DRAWER.—The plaintiff Hoffman was disbursing agent for the executor of an estate from which one Peter W. Brubaker was entitled to receive a sum of money. Hoffman was ignorant as to the whereabouts of Brubaker. Eventually he received a letter from Lincoln, Neb., signed Peter W. Brubaker. He thereupon wrote to this Brubaker, informing him of the money and telling him to execute a release before a Notary Public, have it witnessed and sent to him and he (Hoffman) would send a draft. This was done, the draft sent and discounted by the defendant bank. It subsequently developed that the Brubaker who was entitled to the money was in Indiana at the time all this occurred, and the draft was never endorsed by him, but by the imposter. Plaintiff, being called upon to pay again, brings this action against the bank for the amount so paid to the imposter. *Held*, he could not recover. *Hoffman* v. *American Exch. Nat. Bank* (1903), — Neb. — 96 N. W. Rep. 112.

In reaching its decision the court reasons that the bank, in paying the draft as it did simply carried out the intention of the drawer, and this theory seems to receive sanction by the weight of authority. *Nat. Bank* v. *Shotwell*, 35 Kan. 360, 11 Pac. Rep. 141, 57 Am. Rep. 171; *Crippen* v. *American Nat. Bank*, 51 Mo. App. 508; *United States* v. *Nat. Exch. Bank*, 45 Fed. Rep. 163; *Meridian Nat. Bank* v. *First Nat. Bank*, 7 Ind. App. 322, 33 N. E. Rep. 247, 34 N. E Rep. 608, 52 Am. St. Rep. 450; *Robertson* v. *Coleman*, 141 Mass. 235, 4 N. E. Rep. 619, 55 Am. Rep. 471; *Land Title & Trust Co.* v. *N. W. Nat. Bank*, 196 Pa. 230, 46 Atl. Rep. 420, 79 Am. St. Rep. 717. For full discussion of the principle see note to same case in 50 L. R. A. 75. Where, however, the endorsement of the real payee is forged, it is held in many states that such endorsement conveys no title, and hence money paid on the strength of such endorsement may be recovered. *Citizens' State Bank* v. *Adams*, 91 Ind. 280; *Kohn* v. *Watkins*, 26 Kan. 691, 40 Am. Rep. 336; *Mills* v. *Barney*, 22 Cal. 240; *Carpenter* v. *Northborough Bank*, 123 Mass. 66; *Fire Ins. Co.* v. *N. H. Nat. Bank*, 60 N. H. 442; *McKleroy* v. *Southern Bank of Kentucky*, 14 La. Ann. 458, 74 Am. Dec. 438.

CHATTEL MORTGAGES-VALIDITY—MORTGAGOR'S POSSESSION AND POWER OF SALE IN ORDINARY COURSE OF BUSINESS.—Mortgages were made to cover a stock of hardware and "new goods purchased to take the place of goods sold." It was orally agreed between the mortgagor and the mortgagee that the mortgagor was to remain in possession of the goods, sell them in the ordinary course of the business and use the proceeds as he needed them. In subsequent proceedings in bankruptcy against the mortgagor, *Held*, the mortgages, as against the trustee in bankruptcy, were valid as to goods still unsold which were on hand when the mortgages were made and the oral agreement effected merely a withdrawal of property as fast as sold from operation of the mortgages; the mortgage did not cover the after-acquired goods inasmuch as possession, with notice of mortgagor's insolvency, was taken by the mortgagee within the four months of the bankrupt law. *In re Ball* (1903),—Dist. Court D. Vt.—123 Fed. Rep. 164.

The court seems to have relied chiefly upon *Etheridge* v. *Sperry*, 139 U. S. 266, 11 Sup. Ct. 565, 35 L. Ed. 171. There, however, the mortgagor agreed to apply surplus proceeds of daily sales to payment of the mortgage debt. And, as a sufficient reason for not following *Bank* v. *Hunt*, 11 Wall 391; *Robinson* v. *Elliot*, 22 Wall. 513; and *Means* v. *Dowd*, 128 U. S. 273, where transactions of this kind were held to be fraudulent, the United States Supreme Court there points out that in those cases, there was no such agreement for application for the proceeds to the mortgage debt and that the power of sale was evidently for mortgagor's sole benefit. In the three Vermont cases

cited by the Vermont Court, in this connection, it does not appear who was to receive the proceeds and in two of them there were additional facts negativing fraud. Possibly, it is inferable from the opinions in the above mentioned decisions of the United States Supreme Court, that it would hold on general principles that the transaction in the principal case was fraudulent. The states are about evenly divided upon this question, holding on one side that such mortgages are conclusively fraudulent and on the other that the question is one of fact and good faith. The latter doctrine seems to be the sound one and among the courts holding to it are the United States Supreme Court and the Vermont Supreme Court. For classification of states and discussion of the question, see Note to *Ephraim* v. *Kelleher* (Wash.) 18. L. R. A. 604; note to *Peabody* v. *Landon* (Vt.) 15 Am. St. Rep. 912; JONES ON CHATTEL MORTGAGES (4th ed.) §§ 415, 379-425. The decision in the principal case seems to be sound on principle. It might be urged, however, that inasmuch as the sales were wholly for the mortgagor's benefit, and the mortgage was wholly inoperative as to after-acquired goods, unless possession was taken in time, as against creditors, the mortgaged stock would be continually decreasing and the mortgagee would derive no practical benefit from the transaction; this, it might be insisted, was primarily a fraudulent arrangement to enable the mortgagor to continue as theretofore in full control of the property and business and to hold the agreement as a shield against the attacks of unsecured creditors. *Pabst Brewing Co.* v. *Butchart*, 67 Minn. 191, 64 Am. St. Rep. 408; *Bergman* v. *Jones*, 10 N. Dak. 520, 88 N. W. 284, 88 Am. St. Rep. 739 and note thereto; and *Brinker* v. *Ashenfelter, et al* (1901),—Neb.—95 N. W. 1124 in which last case an agreement identical with that in the principal case was held fraudulent as a matter of law. See the following recent decisions, *Atchison Saddlery Co.* v. *Gray* —Kan.—65 Pac. 987; *Williams* v. *Mitchell*—Kan.—58 Pac. 1025; *Roden, et al*, v. *Norton, et al*,—Ala—29 South. 637; *Burford, et al* v. *First National Bank, of Lafayette, et al*,—Ind—66 N. E. 78; *State, ex rel Kennan*, v. *Fidelity Dep. Co.*—Mo.—67 S. W 958.

CONSTITUTIONAL LAW—DUE PROCESS AT LAW—FORFEITURE OF LANDS FOR FAILURE TO PAY TAXES.—An act providing that on failure to pay back taxes on swamp lands at a certain date they should be forfeited and vested in the state board of education and that no "suit, action, proceeding, order, decree, or judicial determination shall be necessary to such forfeiture," *Held*, unconstitutional, as depriving an owner of property without sanction by the "law of the land." *Parish* v. *East Coast Cedar Co.* (1903),—N. C.—, 45 S. E. Rep. 768.

As to whether a state can declare a forfeiture of lands of an owner based on default in payment of taxes without judicial finding, is unsettled and there is a conflict upon the question. The courts of Mississippi and of Minnesota have each denied such a power. *Griffin* v. *Mixon*, 38 Miss. 424; *Hill* v. *Lund*, 13 Minn. 451. On the other hand, the courts of Virginia and West Virginia have affirmed it. *Usher* v. *Bride*, 15 Grat. 190; *State* v. *Sponaugle*, 45 W. Va. 415. But there is no direct authority that non-payment of taxes at a certain time ipso facto will vest the land in the state or some other designated body. Whatever may be the expression occurring in certain decisions, this has been left in doubt by the Supreme Court of the United States. Such a right has been declared "impossible." COOLEY ON TAXATION (3rd ed.) 863.

CONSTITUTIONAL LAW—LOCAL OPTION LAW—USE OF LIQUORS IN RELIGIOUS WORSHIP—DISCRIMINATION.—The Bill of Rights, Art. 1 § 6, forbids any interference with the rights of conscience and matters of religion, or giving